Andy Frain Services, Inc. *and* International Union, United Plant Guard Workers of America, (UPGWA). Case 27–CA–12307

February 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On September 8, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 27–RC–7181. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On February 1, 1993, the General Counsel filed a Motion for Summary Judgment. On February 3, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the grounds that the employees are under the jurisdiction of the Railway Labor Act and that the employees are not guards within the meaning of the Act.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Stapleton International Airport in Denver, Colorado, has been engaged in providing airport security personnel for security screening and passenger assistance. The Respondent, in the course and conduct of its business operations, contracts with individual airline carriers to provide services which the carriers are required to supply under applicable Federal Aviation Administration Regulations.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, has provided services which are an essential link in interstate transportation and annually provides services valued in excess of $50,000 for United Airlines, which corporation is directly engaged in interstate commerce. The Respondent annually derives gross revenues in excess of $250,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act[1] and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held on or about June 30, 1992, the Union was certified on July 9, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

[1] In its answer to the complaint, the Respondent states that it is without sufficient information to admit the statements relative to the "essential link in interstate transportation" allegation in par. 2(c) of the complaint. That paragraph alleges that "During the past twelve month period the Respondent . . . has provided services which are an essential link in interstate transportation." The Respondent further states in its answer that it is without sufficient information to admit the statement relative to the assertions with regard to United Airlines as a corporation in par. 2(d) of the complaint. That paragraph alleges that the Respondent annually provides "services valued in excess of $50,000 for United Airlines, which corporation is directly engaged in interstate commerce." The Respondent also denies in its answer that it is an employer engaged in commerce within the meaning of the Act. To the extent that the Respondent is attempting to relitigate the Board's exercise of its discretionary jurisdiction, we find that the Respondent did not timely raise such matters in Case 27–RC–7181 and is bound by the Board's prior jurisdictional determination on May 6, 1992, in that case. See *Training School at Vineland*, 301 NLRB 217 fn. 1 (1991). Thus, the Respondent was engaged in commerce within the meaning of the Act. To the extent the Respondent's denials are an attempt to raise the Board's exercise of its statutory jurisdiction, we find that the Respondent has not set forth any matters which would cause alteration of our prior finding that the Respondent's operations constitute an essential link in interstate transportation, and the Respondent derives over $250,000 annually from such operations. Accordingly, we find that the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act and the Respondent's answer does not warrant a hearing on these matters.

> All guards within the meaning of the Act employed by the Respondent at Stapleton International Airport, Denver, CO., which includes all employees employed as screeners and screeners-in-charge, but excluding all bus drivers, bus directors, baggage agents and special service agents, professional employees, check point supervisors and all other supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since on or about July 5, 1992, the Union has requested the Respondent to bargain and, since on or about July 29, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 29, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Andy Frain Services, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Plant Guard Workers of America, (UPGWA), as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All guards within the meaning of the Act employed by the Respondent at Stapleton International Airport, Denver, CO., which includes all employees employed as screeners and screeners-in-charge, but excluding all bus drivers, bus directors, baggage agents and special service agents, professional employees, check point supervisors and all other supervisors as defined in the Act.

(b) Post at its facility in Denver, Colorado, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Plant Guard Workers of America (UPGWA), as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

> All guards within the meaning of the Act employed by us at Stapleton International Airport, Denver, CO., which includes all employees employed as screeners and screeners-in-charge, but excluding all bus drivers, bus directors, baggage agents and special service agents, professional employees, check point supervisors and all other supervisors as defined in the Act.

ANDY FRAIN SERVICES, INC.